



0000123727

BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB 11 2011

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
DIECA COMMUNICATIONS DBA COVAD
COMMUNICATIONS COMPANY, ESCHOLON
TELECOM OF ARIZONA, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, INC.,
MOUNTAIN TELECOMMUNICATIONS, INC.,
XO COMMUNICATIONS SERVICES, INC. AND
QWEST CORPORATION'S REQUEST FOR
COMMISSION PROCESS TO ADDRESS KEY
UNE ISSUES ARISING FROM TRIENNIAL
REVIEW REMAND ORDER, INCLUDING
APPROVAL OF QWEST WIRE CENTER LISTS.

DOCKET NO. T-03632A-06-0091
T-03267A-06-0091
T-04302A-06-0091
T-03406A-06-0091
T-03432A-06-0091
T-01051B-06-0091

DECISION NO. 72178ORDER

(2010 Additions to Non-Impaired Wire
Centers)

Open Meeting
February 1, and 2, 2011
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT**Procedural History**

1. On May 20, 2008, in Decision No. 70355, the Commission approved a Settlement Agreement ("Wire Center Settlement") between Qwest and DIECA Communications, Inc., doing business as Covad Communications Company and Mountain Telecommunications, Inc. ("Covad"); Eschelon Telecom of Arizona, Inc. ("Eschelon"); McLeodUSA Telecommunications Services, Inc. ("McLeod"); and XO Communications Services, Inc. ("XO") (collectively "Joint CLECs"). The Wire Center Settlement Agreement resolved issues between Qwest and the Joint CLECs concerning Qwest's initial list of non-impaired wire centers, and established procedures that would apply

1 between the parties with respect to future Qwest filings to update the non-impaired wire center list.

2 2. On June 21, 2010, Qwest Corporation filed an Application for Approval of 2010
3 Additions to Non-Impaired Wire Centers ("2010 Application").

4 3. The Commission last approved additions to the non-impaired wire centers list in
5 Decision No. 70747 (February 12, 2009). Decision No. 70747 addressed Qwest's 2007 and 2008
6 Additions Applications. In that Decision, the Commission adopted procedures for future non-
7 impaired wire center filings, which directed Qwest to request a Procedural Conference when it made
8 its new filing, at which time the Commission would establish procedures to govern the next phase of
9 the proceeding.

10 4. Pursuant to the terms of the Wire Center Settlement Agreement, Qwest sent an e-mail
11 notification of the anticipated wire center updates to the Joint CLECs and all other affected carriers,
12 and pursuant to the procedures adopted in Decision No. 70747, requested a Procedural Conference to
13 discuss procedures for processing the 2010 Application.

14 5. By Procedural Order dated July 2, 2010, a telephonic Procedural Conference convened
15 on July 26, 2010.

16 6. The July 26, 2010, Procedural Conference was attended by counsel for Qwest, the Joint
17 CLECs and the Commission's Utilities Division ("Staff"). The parties agreed that the procedures that
18 were adopted in connection with Qwest's 2007 and 2008 Additions Applications were effective in
19 those cases and should be utilized in connection with the 2010 Application.

20 7. On August 6, 2010, as discussed in the Procedural Conference, and after consulting with
21 Staff, Qwest filed a list of telecommunications carriers in Arizona as a proposed service list in this
22 phase of the proceeding.

23 8. By Procedural Order dated August 12, 2010, procedures and deadlines were adopted for
24 interested CLECs to: 1) execute the Protective Order approved in this matter;¹ 2) file objections to
25 Qwest's 2010 proposed designations; and 3) for Staff to file its Staff Report or Objections. The
26 Procedural Order was mailed to all the carriers on the service list.

27 ¹ In connection with Qwest's 2007 and 2008 Additions Applications, a Protective Order was adopted that applies to all
28 future Applications to the Non-Impaired Wire Centers List until further Order of the Commission. See Procedural Order
dated August 25, 2008 at p. 4.

9. No entity filed objections to Qwest's proposed 2010 additions to the Non-Impaired Wire Center List.

10. In conformance with the August 12, 2010, Procedural Order, on October 22, 2010, Staff filed its Comments on Qwest's 2010 Application. Staff found no reason to dispute Qwest's proposed wire center reclassifications and recommended approving the 2010 Application.

Background

11. Section 251(2)(B) of the 1996 Telecommunications Act provides that in determining which “network elements,” or UNEs,² incumbent local exchange carriers (“ILECs”) must make available to requesting carriers, the Federal Communications Commission (“FCC”) shall consider whether the failure to provide access to such network element would “impair” the ability of the telecommunications carrier seeking access to provide the services it seeks to offer.

12. On February 4, 2005, the FCC released its Order on Remand in *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*. (“Triennial Review Remand Order” or “TRRO”).³ In the TRRO, the FCC established criteria for determining whether CLECs are impaired without access to other UNEs.

13. A wire center is the location of the ILEC local switching facility containing one or more Central Offices, and defines the area in which all customers serviced by a given wire center are located. When wire centers are designated as non-impaired for certain services, requesting carriers are no longer able to access those UNEs at Total Element Long Run Incremental Cost ("TELRIC") prices, and those carriers must transition to facilities of their own, to alternative services from another provider, or obtain the facilities from the ILEC at tariff prices.

14. In the *TRRO* the FCC, among other things, established the standards for determining impairment for high-capacity dedicated transport and loops. The standards hinge on the number of business lines and fiber-based collocators in the individual wire centers. The *TRRO* adopts different business line and collocator thresholds for DS1, DS3 and dark fiber transport and DS1 and DS3

² Unbundled Network Element

³ 20 FCC Rcd. 2533 (2005).

1 loops. It eliminated unbundling requirements for dark fiber loops entirely.

2 15. Under the *TRRO*'s criteria, CLECs are deemed not to be impaired without access to DS1
3 transport on routes connecting a pair of wire centers where both wire centers contain at least four (4)
4 fiber-based collocators or at least 38,000 business access lines. Wire centers meeting these criteria
5 are referred to as "Tier 1" wire centers. For DS3 transport and dark fiber transport, the *TRRO*
6 established that there is no impairment on routes connecting wire centers where both wire centers
7 contain at least three fiber-based collocators or at least 24,000 business lines. Wire centers with three
8 or more fiber-based collocators or 24,000 or more business lines are "Tier 2" wire centers. For DS1
9 loops, CLECs are not impaired in any building within the service area of a wire center containing
10 60,000 or more business lines and four or more fiber-based collocators; and for DS3 loops CLECs
11 are not impaired within a wire center service area containing 38,000 or more business lines and four
12 or more fiber-based collocators.

13 2010 Application

14 16. In its 2010 Application, Qwest proposes the following additions to the Non-impaired
15 Wire Centers list:

16 <u>Wire Center</u>	<u>CLLI</u>	<u>TIER</u>	<u>Non-Impairment for</u>
17 Chandler Main	CHNDAAZMA	Tier 1	DS1, DS3, Transport & DF ⁴
18 Chandler West	CHNDASWE	Tier 1	DS1, DS3, Transport & DF
19 Thunderbird	SCDLAZTH	Tier 1	DS3 Loops
20 Tucson East	TCSNAZEA	Tier 2	DS3 Transport & DF

21
22 17. In its 2010 Application, Qwest is seeking to move its Chandler Main and Chandler West
23 wire centers from Tier 2 for DS3 Transport and dark fiber to Tier 1 and add the Tier 1 designation for
24 DS1 Transport and Dark Fiber.⁵ Additionally, Qwest is seeking Tier 1, DS3 loops designation for its
25 Thunderbird wire center and Tier 2 DS3 Transport and dark fiber classification for its Tucson East
26 wire center. With the 2010 Wire Center additions, Qwest would have 13 wire centers that have some
27

28 ⁴ Dark Fiber

⁵ Tier 2 designations were granted in Decision No. 70747 (February 12, 2009).

1 form of non-impairment designation.

2 18. No entity objected to the designations of non-impairment or tiers set forth in the 2010
3 Application. Qwest complied with the methodology for selecting non-impaired wire centers as set
4 forth in Section V of the Wire Center Settlement Agreement. There is no evidence that the line counts
5 or inventories of fiber-based providers provided by Qwest do not meet the criteria established in the
6 *TRRO*.

7 19. Qwest's 2010 Application should be approved, and the wire center designations set forth
8 therein added to the list of unimpaired wire centers.

9 20. Qwest and Joint CLECs agreed in the Wire Center Settlement Agreement that the
10 effective date of uncontested wire center designations would be "thirty (30) days after the [date
11 Qwest submits its non-impairment or tier designation filing, with supporting data] unless the
12 Commission orders otherwise."⁶ They further agreed that if there was an objection to Qwest's
13 proposed non-impairment designation they would request that the Commission attempt to resolve the
14 dispute within 60 days.⁷

15 21. The terms of the Wire Center Settlement Agreement were determined to be fair and
16 reasonable in Decision No. 70355. Consequently, for the parties to that agreement, the effective date
17 of the uncontested wire center designations is controlled by that agreement. In their Exceptions, the
18 Joint CLECs argue that the effective date in this phase of the docket should be later than the
19 Settlement Agreement calls for because the procedural order in this phase extended the dates for
20 CLECs to file objections and provided for Staff to subsequently file its report. The Joint CLECs ask
21 that the effective date of the non-impairment designations shall be October 22, 2010. At the Open
22 Meeting Qwest stated that it did not want to contest the Joint CLECs' request, on the condition that a
23 grant of the Joint CLECs' request shall not overrule the Settlement Agreement's provisions regarding
24 the effective date for future non-impairment designations, or establish precedent with regard to future
25 phases in this docket. Because there is no opposition to the Joint CLECs' request with Qwest's
26 proposed condition, and because the public interest is not adversely affected, the Commission finds

27 _____
28 ⁶ Wire Center Settlement Agreement at Section V.F.2 (Attached to Decision No. 70355 as Exhibit A).

⁷ Wire Center Settlement Agreement at Section V.F.3.

1 that the effective date for the Joint CLECs shall be October 22, 2010, subject to condition proposed
2 by Qwest. However, the terms of the Wire Center Settlement Agreement do not bind non-party
3 carriers. Therefore, for all carriers other than for the Joint CLECs, it is reasonable that the effective
4 date of the non-impaired designations in the 2010 Application should be the effective date of this
5 Decision.

6 **Process for Future Filings**

7 22. The Commission and the parties have now had several years experience with Qwest's
8 applications to add wire centers to the Non-impaired Wire Centers List. Heretofore, Qwest has been
9 required to request a Procedural Conference at the time it files its request for additions, at which time
10 the parties and an Administrative Law Judge discuss how to proceed. Because Qwest and the Joint
11 CLECs have agreed to a process, but other CLECs have not, the Procedural Conference discussions
12 have focused primarily on how to provide notice of the proceeding and an opportunity for meaningful
13 participation to all affected Arizona telecommunications carriers. Following those discussions, Staff
14 and Qwest have worked together to develop a mailing list of Arizona carriers, and the Hearing
15 Division has issued and mailed a Procedural Order containing procedural deadlines to all Arizona
16 CLECs.

17 23. In the future, the entire process can be streamlined and made more efficient if at, or
18 before, the time Qwest files a future wire center additions request, it confers with Staff to develop the
19 mailing list of affected Arizona carriers, as well as a form of notice that Qwest can serve on all
20 affected Arizona carriers. Such notice, to be approved by Staff, at a minimum should provide the
21 carriers with: 1) information about the proposed designations; 2) how to obtain the information
22 supporting Qwest's proposed designations; and 3) provide at least 30 days for interested carriers to
23 review the information and to file any objections to Qwest's proposed designations.

24 24. Qwest should file certification of mailing the notice as soon as practical.

25 25. If the matter is uncontested, Staff may prepare an Order for the Commission's
26 consideration, or forward the matter to the Hearing Division for the preparation of an Order. In the
27 latter case, Staff shall file a Staff Report and recommendations. If any carrier, intervenor, or Staff
28 objects to Qwest's proposed designations, the Hearing Division shall establish procedures for

1 resolving the dispute. Furthermore, any party may request a Procedural Conference before an
 2 Administrative Law Judge to discuss the process or substantive issues raised by the Application at
 3 any time.

4 26. Heretofore, only a limited number of CLECs have intervened in these dockets.⁸ As a
 5 result of the more streamlined process, Qwest no longer needs to request a Procedural Conference at
 6 the time it files its Application and becomes responsible, with Staff's input and approval, for
 7 providing notice of the proceeding. The Application should be able to be processed more quickly and
 8 with less expense.

9 ...

10 CONCLUSIONS OF LAW

11 1. Qwest is a public service corporation within the meaning of Article XV of the Arizona
 12 Constitution.

13 2. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

14 3. The Commission has jurisdiction over Qwest and the subject matter of the 2010
 15 Application.

16 4. Notice of the proceeding was provided in conformance with law.

17 5. Qwest's designations of non-impaired wire centers, as set forth in its 2010 Application,
 18 meet the criteria for non-impairment as set forth in the *TRRO*, and the designated wire centers should
 19 be added to the list of non-impaired wire centers.

20 ORDER

21 IT IS THEREFORE ORDERED that the following wire centers shall be added to the list of
 22 non-impaired wire centers, with an effective designation date as discussed herein:

<u>Wire Center</u>	<u>CLLI</u>	<u>TIER</u>	<u>Non-Impairment for</u>
Chandler Main	CHNDAAZMA	Tier 1	DS1, DS3, Transport & DF
Chandler West	CHNDASWE	Tier 1	DS1, DS3, Transport & DF
Thunderbird	SCDLAZTH	Tier 1	DS3 Loops

28 ⁸ In addition to the Joint CLECs, five others have intervened or requested to remain on the service list.

Tucson East

TCSNAZEA

Tier 2

DS3 Transport & DF

IT IS FURTHER ORDERED that the procedures established in Decision No. 70747 concerning the filing of future phases in this docket shall be replaced with the procedures for future filings as discussed herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 11th day of February, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

DIECA COMMUNICATIONS DBA COVAD
COMMUNICATIONS COMPANY, ESCHELON
TELECOM OF ARIZONA, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, INC.,
MOUNTAIN TELECOMMUNICATIONS, INC., XO
COMMUNICATIONS SERVICES, INC. AND QWEST
CORPORATION

5 DOCKET NOS.:

T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-
0091; T-03406A-06-0091; T-03432A-06-0091; and T-
01051B-06-0091

8 Greg Diamond
COVAD COMMUNICATIONS COMPANY
9 7901 East Lowry Boulevard
Denver, CO 80230-6507

Douglas Denney, Senior Attorney
ESCHELON TELECOM, INC.
1201 NE Lloyd Boulevard, Suite 500
Portland, OR 97232

11 William Haas
MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.
12 P.O. Box 3177
6400 C Street SW
13 Cedar Rapids, IA 52406-3177

Thomas W. Bade
ARIZONA DIALTONE, INC.
6115 South Kyrene Road, No. 103
Tempe, AZ 85283-1758

14 Mike Hazel
MOUNTAIN TELECOMMUNICATIONS
15 1430 West Broadway Street, Suite 206
Tempe, AZ 85282-1100

Gary Joseph, Vice President
NATIONAL BRANDS, INC.
dba SHARENET COMMUNICATIONS
4633 West Polk Street
Phoenix, AZ 85043-2902

17 Rex Knowles
XO COMMUNICATIONS SERVICES
18 7050 Union Park Avenue, Suite 500
Midvale, UT 84047

Brad VanLeur, President
ORBITCOM
1701 North Louise Avenue
Sioux Falls, SD 57107-0210

19 Norman G. Curtright
QWEST CORPORATION
20 20 East Thomas Road, 16th Floor
21 Phoenix, AZ 85012-3114

Michel Singer Nelson
Associate General Counsel
360NETWORKS (USA) INC.
370 Interlocken Boulevard, Suite 600
Broomfield, CO 80021

22 Michael W. Patten
ROSHKA, DEWULF & PATTEN, PLC
23 400 East Van Buren Street, Suite 800
Phoenix, AZ 85004-2262

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007-2927

25 Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
Phoenix, AZ 85007-2927